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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/700,265	11/03/2003	Steven W. Minneman	MTM 045 P2	3695
34232	7590	12/03/2004	EXAMINER	
MATTHEW R. JENKINS, ESQ. 2310 FAR HILLS BUILDING DAYTON, OH 45419			RICHARDSON, JOHN A	
			ART UNIT	PAPER NUMBER
			3641	


DATE MAILED: 12/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/700,265

Applicant(s)MINNEMAN, STEVEN W. **Examiner**

John Richardson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 August 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-36 is/are pending in the application.
- 4a) Of the above claim(s) 36 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-35 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>08-19-2004</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Non Final Rejection

1). Applicant's election of Group I in the reply filed on August 30 2004 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

The requirement is still deemed proper and is therefore made FINAL.

2). Claim 36 is withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on August 30 2004.

3). The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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4). The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5). Claims 1, 3, 4, 6, 7, 8, 10, 14, 17, 19, 20, 24, 26, 30, 33, 34 and 35 are rejected under 35 U.S.C. 102(b) as being anticipated by Cady (U.S. 5,628,135).

The reference discloses a firearm support apparatus comprising a front base (item 42 sub-assembly) with a front fork (item 42c) with a plurality of support components (items 42a, 42b, 42d), a rear base (item 16 sub-assembly) with a rear fork (item 34) and a second plurality of support components (items 36, 38, 39, 39a, 39b), a coupling component (items 20, 22) for securing said front and rear bases, and said coupling providing a means for pivoting the said front and second bases relative to one another in a manner as stated in the applicants specification (see [0018]) wherein the said rear second plurality of supports can lie in a different plane than the said first plurality of supports through the rotation tube item 30 by release of locking collar item 24, and wherein the said firearm support apparatus forms a trapezoidal plan support foot-print (defined as a quadrilateral outline with two parallel sides as shown in Figure 3 of the

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disclosure and consistent with the applicant's definition stated in [0020] and shown in the applicant's Figures 5, 6, and the said first and second support foot-print distances are different as shown in Figure 1, being different with the said first support item 22, being larger than the said second support item 39, relating to claims 3, 19, the reference can be adapted to support a hand-gun (see Figure 7), relating to claims 4, 20, the reference discloses a tubular telescope detail (items 20, 30), relating to claims 6, 7, 19, the reference discloses that the said rear support sub-assembly is detachable and facilitates the use as a hand-gun support as shown in Figure 7, and retains the capability to vary the distance between the said front and rear support sub-assemblies by means of a telescopic detail (items 20, 30), the relating to claims 8, 24, 34, 35, the said plurality of first and second supports can be placed in different planes generally perpendicular to the axis of the said firearm support, relating to claims 10, 26, the said front and rear support assemblies are adjustable (see Column 2, lines 64+, Column 3, lines 1-7), relating to claims 14, 30, the reference discloses provides a planar area for a handgun support (item 60), relating to claim 33, the reference discloses that the said coupling (item 20) incorporates a locking collar / clamp detail (item 24) recognizing the dictionary definition for a clamp includes "a device designed to bind two or more parts together".

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6). Claims 1, 2, 5 to 7, 11, 13, and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by McClure et al (U.S. 5,933,999).

The reference discloses an apparatus that is inherently capable of operating and functioning in the manner cited in the applicant's claims, comprising a front base support sub-assembly (item 27), a front fork (item 16), a rear base support sub-assembly (item 28), a rear fork (item 17), a coupling detail connecting the said front and rear bases (item 11), a means for placing the said support sub-assemblies in different plane by rotating the said support items 27 and 28, and reference discloses an alternative support design in the form of molded blocks (items 33, 38, Column 4, lines 1-23), wherein the said rear support (item 38) foot-print distances measuring less the front support (item 33) foot-print, relating to claims 2, 5-7, 11, 13, and 15 specifying molded plastic materials, the reference discloses the use of plastic materials (Column 4, lines 15-18) in this respect that read on the applicant's claim limitations.

As to limitations which are considered to be inherent in a reference, note the case law In re Ludke, 169 USPQ 563, In re Swinehart, 169 USPQ 226, In re Fitzgerald, 205 USPQ 594, In re Best et al, 195 USPQ 430, and In re Brown, 173 USPQ 685,688.

It is noted that a claim containing a "recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from prior art apparatus" if the prior art teaches all the structural limitations of the claim. In re Masham, 2 USPQ2d 1647.

Claims directed to apparatus must be distinguished from prior art in terms of structure rather than functions. In re Danly, 120 USPQ 528, 531.

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Apparatus claims cover what a device *is*, not what a device *does*. Hewlett-Packard Co. v. Bausch & Lomb Inc., 15 USPQ2d 1525, 1528.

As set forth in MPEP§ 2115, a recitation in a claim to the material or article worked upon, does not serve to limit an apparatus claim.

7). Claims 18, 21 to 23, 27, 29, and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cady (U.S. 5,628,135) as applied to claims 1, 3, 4, 6, 7, 8, 10, 14, 17, 19, 20, 24, 26, 30, 33, 34 and 35, in view of McClure et al (U.S. 5,933,999).

The primary reference discloses the claimed invention except for specifying the use of molded plastic / polymer materials (in this connection the definition of "polymer" is based on the dictionary definition of chemical compound). The secondary reference, McClure et al, discloses that it is well known in the firearm support art to employ the use of molded plastic materials. It would have been obvious to one of ordinary skill in the art at the time of the invention to have incorporated plastic materials for the Cady supports as disclosed by McClure (Column 4, lines 1-23) as this is a well-known material in the art that would prevent marring or scratching of the firearm parts and that it has been held that to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design, *In re Leshin*, 125 USPQ 416..

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8). Claims 9, 12, 25, and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cady (U.S. 5,628,135) as applied to claims 1, 3, 4, 6, 7, 8, 10, 14, 17, 19, 20, 24, 26, 30, 33, 34 and 35 in view of Jacobs (U.S. D471, 248 S) and Cabellas (applicant's IDS page 4, item A, admitted prior art item "The Rock").

The primary reference discloses the claimed invention except for specifying the weight of the gun rest as being about 5 pounds. It would have been obvious to one of ordinary skill in the art at the time of the invention to have specified weight limitations with respect to the gun rest, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art, *In re Boesch*, 617 F.2d. 272, 205 USPQ 215 (CCPA 1980) and in addition the secondary references together disclose gun rest supports of about 5.5 pounds.

9). Claims 16, and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cady (U.S. 5,628,135) as applied to claims 1, 3, 4, 6, 7, 8, 10, 14, 17, 19, 20, 24, 26, 30, 33, 34 and 35 in view of Jacobs (U.S. D471, 248 S) and Cabalas (applicant's IDS page 4, item A, admitted prior art item "The Rock" and "Minimizer Rest").

The primary reference discloses the claimed invention except for specifying the precise measurements of the applicant's gun support. It would have been obvious to one of ordinary skill in the art at the time of the invention to have specified measurement limitations with respect to the gun rest, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art, *In re*

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Boesch, 617 F.2d. 272, 205 USPQ 215 (CCPA 1980) and in addition the secondary references together disclose gun rest supports with dimensions within the range of limitations included in the applicant's claims.

10). The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

11). Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Richardson whose telephone number is (703) 305 0764. The examiner can normally be reached on Monday to Thursday from 7.00 AM to 4.30 PM. The examiner can also be reached on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Carone, can be reached on (703) 306 4198. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.


Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308 1113.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications can be obtained from either private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <[http:// pair-direct.uspto.gov](http://pair-direct.uspto.gov)>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

John Richardson, PE,

November 30 2004.


MICHAEL J. MOORE
SUPERVISORY PATENT EXAMINER